



SPEECH

OF

HON. J. S. PHELPS, OF MISSOURI,

ON

THE BILL TO PROTECT THE RIGHTS OF

AMERICAN SETTLERS IN OREGON.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, THURSDAY, APRIL 16, 1846.

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AMERICAN SETTLERS IN OREGON.

The House being in Committee of the Whole on the state of the Union, on the Bill to protect the rights of American Settlers in the territory of Oregon, until the termination of the joint occupation of the same—

Mr. PHELPS rose and said:

Mr. CHAIRMAN: This is one of a series of measures recommended by the Executive in his Annual Message, having for their object the maintenance of our rights in the territory of Oregon, the protection of our emigrants settled there, and the encouragement of emigration to that country. Representing, as I have the honor in part to do, one of those States which have furnished the greatest number of emigrants, and representing also a portion of population designing to emigrate there, it must naturally be supposed that I feel a deep solicitude in everything that pertains to the rights and interests of our people in that country.

In discussing the joint resolutions of notice which passed this House, and which now await the final action in another branch of Congress, there were some gentlemen who were disposed to descant upon the blessings of peace, to dwell upon the happy results which this country has realized from its long continuance, and to depict, in glowing colors, the horrors and evils of war. For my own part, viewing the resolution of notice as a peace measure, and not designed to disturb the relations between the two Governments, I gave it my hearty concurrence. The convention itself stipulated for that very notice; and gentlemen who are disposed to regard it as a war measure, must do so upon the strange assumption that the two Governments had themselves, in 1827, provided in advance for a certain resort to hostilities. Is it to be presumed that either nation would abandon its rights in the territory, or that this joint occupation of it is to endure through all time to come? Such a presumption could not have been entertained for a moment.

But it has been said that the convention of 1818, indefinitely continued in 1827, was adopted as a substitute for war; that we were unable to obtain from Great Britain a recognition of our rights to this territory, by which we should now have enjoyed exclusive possession of it, and that, therefore, as a matter of necessity, we resorted to this joint convention. In the debates which have taken place, on the resolution of notice, our title to the territory of Oregon has been fully argued. It is to be remarked that four nations have heretofore claimed rights in this territory: Russia, the United States, Great Britain, and Spain. So far as the title is concerned, it is immaterial whether the province of Louisiana, ceded by France, extended to the western ocean, or whether its western boundary was the Rocky Mountains; for whatever rights France had, we claim by the treaty of 1803. Let us, then, examine for a few moments the title which these several nations had to this territory.

Russia, by exploration and discovery on the northwest coast, had rights recognised by all sovereign nations; but the extent and limits of her territory were defined under the convention of 1824, by which it was stipulated on the part of the United States that we would make no settlements north of the parallel of 54° 40', nor she, south of that parallel. Spain, however, based her title not only on the ground of discoveries by early navigators, but of explorations and settlements. We claim that, under the treaty of Florida, all the rights which Spain had on the northwest coast, north of latitude 42, were ceded to the United States.

But it has been said that the Nootka Sound convention guaranteed to Great Britain certain rights upon the northwest coast, and that all these rights were revived by her treaty of 1815 with Spain. The fifth article of the Nootka Sound convention is in the following words:

“ART. 5. As well in the places which are to be restored to the British subjects by virtue of the first article, as in all

other parts of the northwestern coasts of North America, or of the islands adjacent, situate to the north of the parts of the adjacent coasts already occupied by Spain, wherever the subjects of either of the two Powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of either shall have free access, and shall carry on their trade without any disturbance or molestation."

Mr. P. continued. The previous articles of the treaty provided for reparation for acts of violence committed by the subjects of Spain on those of Great Britain, or rather those who claimed to be the subjects of Great Britain, who were there on trading expeditions, not under the flag of Great Britain, but under the flag of Portugal. The article I have read, then, provides that no settlements shall be made by Great Britain, except to the north of those places already occupied by Spain. What part of the coast was then occupied by Spain? There was a settlement at Nootka Sound, in the latitude of 49° 30', which was in the occupation of the Spanish Government. Great Britain, therefore, by the terms of that convention, claimed no rights south of Nootka Sound. But the question arises, were any rights obtained under that treaty? I say, that, by the declaration of war by Spain against Great Britain, in the year 1796, the treaty of Nootka Sound was abrogated and annulled. It is a general principle of the law of nations, that war annuls and abrogates all treaties between the belligerent Powers, although some distinguished diplomatists have contended that there are exceptions. Lord Bathurst, however, in the year 1815, thus expresses his own opinion on that point:

"It has been urged, indeed, on the part of the United States, that the treaty of 1783 was of a peculiar nature, and that, because it contained a recognition of American independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature, Great Britain cannot accede. *She knows of no exception to the rule, that all treaties are put an end to by a subsequent war between the same parties*; she cannot, therefore, consent to give to her diplomatic relations with one State a different degree of permanency from that on which her connexion with all other States depends."

Mr. P. continued: If, then, no settlements were made by the British Government, or her subjects, on the northwest coast, prior to the declaration of war by Spain in 1796, Great Britain obtained no rights by virtue of the treaty. She had no settlements, and could therefore claim nothing by settlement or occupation, although the treaty provided that settlements might be made by her subjects northward of those parts of the coast already occupied by the subjects of Spain. Whatever rights she had under the Nootka Sound convention expired by the war of 1796, and have not been revived; and although certain commercial treaties were revived in 1815, yet they never extended to her colonies in North America.

But again: It becomes necessary to examine what are the claims of the respective parties to this territory. Whilst we, on the part of the United States, have constantly asserted our title, Great Britain has never claimed any exclusive privileges. Her commissioners, in 1826, Messrs. Huskisson and Addington, asserted that Great Britain claimed no exclusive rights over any portion of the territory. They said:

"Great Britain claims no exclusive sovereignty over any

portion of that territory. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other States, leaving the right of exclusive dominion in abeyance."

Mr. P. continued: Thus it will be seen that, in 1826, no exclusive privileges were claimed by Great Britain. The country was free to the settlement and occupation of all nations; whilst, on the part of the United States, our title has been asserted by virtue of the discovery of the mouth of the Columbia, by Gray, in 1790; and, also, by the exploration of that country by Lewis and Clarke in 1805 and 1806; and by the settlement made at Astoria in 1810. By virtue of these several discoveries, explorations, and settlements, and by virtue of the treaty of 1819, by which Spain ceded to us all the country north of the 42d parallel, and extending to the Pacific, we claim this territory. Upon this basis our title to it stands. Great Britain is precluded, is *stopped*, by the Nootka Sound convention, if that is to be considered in force, from claiming any right to the territory south of Nootka Sound; if that convention was abrogated in 1796, she had made no settlement prior to the settlement of Astoria. That settlement, it is well known, was captured by her, and restored to us under the treaty of Ghent.

But the convention of 1818, between the United States and Great Britain, recognises the rights of other nations on that coast. The third article provides:

"It is agreed that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present convention to the vessels, citizens and subjects of the two Powers—it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences among themselves."

Now, (continued Mr. P.,) why was this clause of the article inserted—"that the convention should not be taken to affect the claims of any other Power or State to any part of the said country"—unless there were other nations who had claims that were respected and regarded by the contracting parties? Therefore we say that the claims of Spain were recognised by the convention; and all those rights which Spain had at its date were ceded to us by the treaty of Florida. And the convention of 1827, which revives that of 1818, contains no stipulation by which the claims of other nations were recognised; thus clearly demonstrating that in 1827 the claims of all other nations to that coast were extinguished, and that it was held either by the United States or Great Britain.

It is said that this bill, taken in connexion with the resolution of notice for the termination of the convention, (and which, it is supposed, will finally receive the sanction of both Houses,) will be regarded as a war measure; and it is argued in some quarters, that although there may be an attempt to dispute it, yet that such is the object, and such the feeling of those who advocate its passage. The President recommended that the laws of the United States should be extended over our citizens in the

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Oregon territory. They have themselves, by their petitions here, called upon us to protect them; to extend our laws over them, for the protection of their property and their persons. Shall we turn a deaf ear to them? Shall we disregard their petitions, when it is no less our right, under the treaty of joint occupation, than it is our duty, to protect them? I assert that this bill, which proposes only to extend our laws over our citizens residing in that territory, does not go the length to which the act of the British Parliament, passed in 1821, extending her jurisdiction over that country, has gone. There is no exception or reservation, as to persons, in the extent of the jurisdiction to be exercised by the courts of Canada. The sixth section of the act provides that the laws of Canada shall be extended over the Indian territory which is not embraced within either of the Provinces of Upper or Lower Canada, or within any civil Government of the United States. There is no exception as to American citizens; and although at the time the act was passed there were but few American citizens residing there, and although, so far as my knowledge extends, no American citizen has been arrested under British laws, yet the power existed, and still exists, and it may have been, or may hereafter be, carried into effect, unless the conflicting claims of the two Governments are speedily settled. The people who have left the United States for that distant region are devotedly attached to the principles of this Government, and they ask the protection of its laws. They have found themselves under the necessity of organizing a provisional government; of enacting laws to protect their rights in the settlements, to provide for the punishment of offences, and to regulate intercourse with the Indian tribes that surround them. This bill proposes that the laws of Iowa, so far as they are applicable, shall be extended to our territories west of the Rocky Mountains. Are not gentlemen willing to extend the protection of the laws of this Government over citizens who acknowledge allegiance to it, but complain that they are without the means of adequate protection? When the convention for the joint occupation of this territory shall have terminated, it will become necessary for us to assert our exclusive rights there, unless the question of title shall previously have been settled by negotiation. I am unwilling to do anything which shall disturb or interfere in any manner with the negotiations on this question, or which shall prevent the Executive and his advisers from pursuing such a course as may seem proper. Entertaining the opinion, however, that our title is good, and that we are entitled to the whole of Oregon, up to the Russian line, I am unwilling that any portion of it shall be conceded to Great Britain. I believe that such a step would be an abandonment of our rights; and I shall be prepared, whenever the convention of joint occupation shall have terminated, to assert the right of the United States to the whole territory.

But the gentleman from Kentucky, [Mr. McHENRY,] the other day, in addressing the committee on an amendment which he proposed, limiting the operation of the bill to the south of the 49th parallel, said he believed that the title of the United States to the valley of the Columbia river, and to the country drained by its tributaries, was good;

yet he was not willing that the laws should be extended over the country to the extent to which he believes our title to be valid—that is, from the head waters of the Columbia, in latitude 52° and 53°. His amendment was rejected. The gentleman from South Carolina [Mr. HOLMES] argued that every provision of this bill was in violation of the treaty of joint occupation; and that even the appointment of Indian agents and the sub-agents necessary to preserve peaceful relations with the tribes in that territory, and to regulate intercourse with them, was a violation of that treaty. Now, if this is a violation of it, already has it been violated on the part of the United States; for some two or three years ago, an agent was appointed for the Indian tribes west of the Rocky Mountains, who has been residing in that territory, and directing his efforts to the preservation of peace.

Again: It is said that the establishment of military posts beyond the Rocky Mountains is a violation of the convention. How can that be, sir, when the convention itself declares that the claims of either of the contracting parties shall not be affected by its provisions, and when it is recollected, as I have shown, that the post of Astoria, which was captured by the British, was restored to us by the treaty of Ghent, thereby recognising our title to the exclusive possession of that post; and when it is also recollected that two successive Presidents of the United States recommended the establishment of such posts at the mouth of the Columbia? It seems to me that it is rather too late now to advance the argument of the violation of the treaty.

It is also said that we have no right to make grants of land to our citizens residing in that territory. This bill does not provide for grants of land. It merely pledges the faith of the nation that provision shall hereafter be made that lands shall be granted to those persons who should settle and reside there for five consecutive years from its date. The grant, therefore, is not completed until five years shall have elapsed from the passage of the act; and I look upon the third and fourth sections as merely holding out inducements to our citizens to continue their residence there, and to show them that if they feel disposed to emigrate, the Government will hereafter provide grants of land for them and their families. A similar provision was contained in a bill introduced into the Senate of the United States in the year 1841. That bill attested that our title to the territory west of the Stony Mountains was good, and would be asserted and maintained; and that grants of land would be made to those who should settle there; thus encouraging and stimulating emigration. After that question was agitated in the Senate, a strong disposition to emigrate was manifested in the West, and, in the very next spring, a party of emigrants left the State of Ohio, and settled in the Willamette valley. This disposition has grown from year to year, under the inducements we have held out, until last year, when more than three thousand emigrants left the western States, and made their homes on the Columbia river. They were induced to do this by the belief that the Government would make them donations of land; that it would extend the jurisdiction of its laws over them; that it would protect them on their route by

the establishment of military posts, and from the incursions and attacks of the Indians; and that the necessary mail facilities would be provided for them. And such is the proper course to be adopted, if we desire finally to secure to ourselves the possession of this whole territory. I would much prefer to see our emigrants going there under the influence of that "masterly inactivity" of which we have heard so much, (in other words, nothing done,) rather than that any portion of the territory should be given up or abandoned. But if our Government does not act speedily, a collision may take place between our citizens and the employees and agents of the Hudson's Bay Company, which may finally result in hostilities between the two Governments. Fearing that this might be the result, I was desirous to see all the measures recommended by the President carried out, not only in the letter, but the spirit. And I must say that the amendment which has been proposed, limiting the operation of the bill to the time at which the joint convention shall expire, is merely carrying out those recommendations in the letter, and not in the spirit. How long would this act remain in force under such a limitation? It will be recollected by gentlemen, that when Dr. White returned last year from the valley of the Willamette to the State of Maine, he accomplished the journey in the unprecedented short space of ninety days. Before a judge of the district court, or a justice of the peace, or an executive officer, could reach that territory, or if now residing there, before their commissions could reach them, some four or five months would elapse; two or three more would expire before the officers could be properly qualified to execute the laws, and before those laws could be enforced; and that in point of fact the act would, for all practical purposes, remain in force four, five, or six months only.

But gentlemen say that this question ought to be settled by negotiation. Do they expect the controversy can be settled by such means, when we have been negotiating for twenty years in relation to this territory and have come no nearer to a settlement than we were the day we

commenced? Is it expected that Great Britain will recede from the pretensions she has so long set up? Can the Government of the United States do so? Can it be expected that the President, even if he felt disposed to do so, could, in the present state of the negotiation, renew the offer so summarily rejected by Mr. Pakenham? Or can it be expected that the Government of Great Britain will make an offer of terms, which they have themselves contemptuously rejected? I confess, that I can see no prospect of the adjustment of the controversy by negotiation; therefore, I believe that the convention for the joint occupation of the territory should terminate, and that the protection of our laws should be extended over our citizens. We shall then, on the termination of the convention, be prepared to assert our rights to the whole country; and if this course of policy shall be pursued, I believe that, as Great Britain merely desires the occupation of the territory for a short time, for the benefit of the fur trade, and not with any view to extend her colonization, we shall be able, at the termination of the convention, to exercise exclusive jurisdiction.

It has been said, that public sentiment is rapidly changing on this question, and that it is settling down on the 49th parallel, as the basis of adjustment. I cannot so read public opinion. I cannot discover that any portion of the American people is receding from the position which has been taken. So far as the State which I have the honor in part to represent is concerned, judging from the tone of the public meetings, held not by one, but by both parties, I can say, that the people have passed resolutions asserting our title to the whole of Oregon, and expressing the desire that there should be no abandonment of our rights, but that the Government should firmly maintain them. I repeat, therefore, that I can see no evidence of this alleged change of public sentiment in favor of a compromise on the 49th parallel. On the contrary, if there has been any change at all, it has been towards a more decided resolution that our rights to the whole territory should be asserted and maintained.

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